

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION**

OLIVIA Y., et al)	
)	
Plaintiffs)	
)	
v.)	CIVIL ACTION NO. 3:04cv251-DCB-FKB
)	
TATE REEVES, as Governor of)	
the State of Mississippi, et al.)	
)	
Defendants)	

**DEFENDANTS' NOTICE OF THE IMPACT OF THE NOVEL CORONAVIRUS
(COVID-19) ON DEFENDANTS' OBLIGATIONS UNDER THE
2ND MODIFIED MISSISSIPPI SETTLEMENT AGREEMENT AND REFORM PLAN**

**TO: ALL COUNSEL OF RECORD
PUBLIC CATALYST GROUP, COURT-APPOINTED MONITOR**

Defendants provide this Notice of the Impact of the Novel Coronavirus ("COVID-19") on Defendants' Obligations Under the 2nd Modified Mississippi Settlement Agreement and Reform Plan ("2nd MSA"). The obligations of the Mississippi Department of Child Protection Services ("MDCPS") under the 2nd MSA have been, and will continue to be, impacted by the ongoing global pandemic related to COVID-19. More specifically:

1. On March 11, 2020, the World Health Organization declared COVID-19 a global pandemic. On March 13, 2020, President Donald J. Trump proclaimed that "the COVID-19 outbreak in the United States constitutes a national emergency." *See* Exhibit A: Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak.

2. On March 14, 2020, Governor Tate Reeves declared a State of Emergency for the entire State of Mississippi based on the risk of the spread of COVID-19. *See* Exhibit B:

Proclamation of Governor Reeves. Governor Reeves' proclamation further directed that "provisions of state statutes, rules, regulations, or orders may be temporarily suspended or modified if compliance with such provisions would prevent, hinder, or delay action necessary to cope with this outbreak." *See* Ex. B; *see also*, Miss. Code Ann. § 33-15-11(c)(1). Governor Reeves' proclamation further directed that the "State Health Officer shall inform members of the public on how to protect themselves and action being taken in response to this outbreak." *See* Ex. B. By Executive Order dated March 16, 2020, Governor Reeves further provided that agencies may identify those core functions and duties which may be performed from home by state employees and may grant administrative leave where necessary. *See* Exhibit C: Executive Order No. 1458.

3. MDCPS is being impacted and will continue to be impacted by the spread of COVID-19. Accordingly, MDCPS has begun to implement policies and take steps to protect the children in its custody and associated families as well as its staff and employees. The policies and steps being taken by MDCPS are based on the guidance being promulgated and revised and updated by the Mississippi State Department of Health ("MSDH"), the Centers for Disease Control and Prevention ("CDC"), and the World Health Organization ("WHO").

4. Based on the guidelines of MSDH, CDC and WHO as well its internal policies and procedures, MDCPS first disseminated guidelines on March 12, 2020, to all of its employees designed to prevent COVID-19 illness among the children in its custody, the associated families, and MDCPS staff and employees and members of the public with potential contact with these groups of individuals. This initial guidance directed staff to immediately implement appropriate hygiene measures, limit unnecessary larger gatherings, and report potential exposure. *See* Exhibit D: MDCPS ebulletin "COVID-19: Precautionary Updates. Next, on March 13, 2020,

MDCPS issued guidance to all foster parents providing the same overview of preventative hygiene measures and restricting out-of-state travel for MDCPS foster children. *See* Exhibit E: March 13, 2020 MDCPS Foster Parents Alerts. On March 16, 2020, MDCPS issued its Emergency Telework Policy and Guidelines for Contact with Clients During the Outbreak of COVID-19. *See* Exhibit F: MDCPS Emergency Telework Policy and Exhibit G: MDCPS Guidelines for Contact with Clients During the Outbreak of COVID-19. MDCPS also issued its guidance related to its plan for continuation of operations on March 17, 2020. *See* Exhibit H: MDCPS Continuation of Operations Plan (Exhibits D – H collectively, the “COVID-19 Guidelines”). Because of the ever-changing and fluid nature of the COVID-19 pandemic, MDCPS may modify and/or add to the COVID-19 Guidelines to reflect additional guidance from MSDH, WHO, CDC, or other authorities.

5. The COVID-19 Guidelines incorporate guidelines such as social distancing and risk assessment. For example, the COVID-19 Guidelines require a caseworker to call a home prior to an in-home visit with a child, foster parent, or biological parent. Under the COVID-19 Guidelines, caseworkers are instructed to call and administer a questionnaire on COVID-19 symptoms over the phone before making any visit with a foster child or family. If someone in the household has symptoms of the virus, the caseworker will not make the visit in the home. Instead, the caseworker will attempt to make contact in this circumstance through remote means, e.g. Facetime. These guidelines are essential to protect children in the *Olivia Y.* class, MDCPS’s staff and employees, and the public from contracting and spreading COVID-19.

6. In addition to these guidelines, MDCPS implemented telework for all county offices effective March 17, 2020 and for some of MDCPS’s state office staff effective March 18, 2020. Staff that cannot work remotely will be placed on paid administrative leave during the

period of this emergency unless the Agency's core functions cannot be achieved without them reporting to an office for work. And, in such circumstances staff will report to offices only in circumstances where their potential exposure to COVID-19 can be limited.

7. Within the constraints of the COVID-19 Guidelines and the evolving scope of the pandemic, MDCPS intends to continue to seek to adhere in good faith and to the extent possible to the commitments outlined in the 2nd MSA. However, strict compliance with the 2nd MSA and analogous state statutes would prevent, hinder, and/or delay actions which are necessary to protect not only the over 4,000 children in MDCPS's custody but also the more than 1,400 employees and staff of MDCPS. By way of example, the following sections of the 2nd MSA are directly impacted by the COVID-19 Guidelines:

- Training [§§ 1.2.b., 1.2.d., 1.2.e.]
- Caseloads [§§ 1.3.a., 1.3.b.]
- Continuous Quality Improvement [§ 1.4.b.]
- Child Safety and Maltreatment in Care [§§ 2.2, 2.3, 2.4, 2.5, 2.7, 2.8.a.1., 2.8.b.]
- Family-Based Placements [§§ 3.1, 3.3.a., 3.3.b.]
- Placement Standards [§§ 4.1, 4.3/4.15, 4.4, 4.6/4.16.b., 4.11, 4.13.b., 4.13.c., 4.18]
- Visitation [§§ 5.1.a.2., 5.1.b.2., 5.1.c.2., 5.1.d.2., 5.2.a., 5.2.b., 5.2.b.1.a., 5.2.b.2.a., 5.2.b.4]
- Child and Youth Permanency [§§ 6.1.a., 6.1.a.2., 6.3.a.2., 6.3.a.4., 6.3.a.5.b., 6.3.a.6., 6.4.a.2., 6.4.b.2.]
- Child Well-being [§§ 8.1.a.2., 8.1.b.2., 8.1.c.2., 8.1.c.3., 8.1.d.2., 8.1.e.2., 8.2.a., 8.2.b., 8.2.c., 8.2.c.1., 8.2.d.1.]

Because the COVID-19 pandemic remains fluid and ever-changing, the sections of the 2nd MSA noted above are merely an example of sections which are directly impacted by COVID-19. It is conceivable, and likely, that every section of the 2nd MSA may be impacted by the COVID-19 pandemic.

8. In addition to the sample sections identified above, MDCPS anticipates that its ability to timely report and produce data to the Court-Appointed Monitor will be impacted due to

the reduced staffing within the Agency during the ongoing COVID-19 pandemic and compliance with certain commitments will likely be negatively impacted.

RESPECTFULLY SUBMITTED, this the 18th day of March, 2020.

TATE REEVES, as Governor of the State of Mississippi, TAYLOR CHEESEMEN, as Acting Interim Commissioner, Mississippi Department of Child Protection Services, and TONYA ROGILLIO, as Deputy Commissioner of Child Welfare, Mississippi Department of Child Protection Services

By: /s/ Clint Pentecost

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